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No. 86-1578

Supreme Court, U.S.
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JOSEPH F. SPANIOL, JR.
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In The

Supreme Court of the United States

—◇—
October Term, 1986
—◇—

JAMES BURKE,
by and through his next Friend, Betty Draves,
Petitioner,

v.

GENERAL MOTORS CORPORATION,
INTERNATIONAL UNION, UNITED AUTOMOBILE,
AEROSPACE AND AGRICULTURAL IMPLEMENT
WORKERS OF AMERICA and UAW LOCAL 652,
Respondents.

—◇—
ON PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

BRIEF OF RESPONDENT GENERAL MOTORS CORPORATION OPPOSING PETITION FOR CERTIORARI

Of Counsel:

GORDON J. QUIST
CHARLES C. HAWK
MILLER, JOHNSON,
SNELL & CUMMISKEY
800 Calder Plaza Building
Grand Rapids, MI 49503 (616) 459-8311

DAVID M. DAVIS
DANIEL G. GALANT
(Counsel of Record)
GENERAL MOTORS CORPORATION
New Center One Building
3031 West Grand Boulevard
Detroit, MI 48232 (313) 974-1608

*Attorneys for
General Motors Corporation*



QUESTIONS PRESENTED

Petitioner's statement of questions did not accurately reflect either the undisputed facts or the findings and rulings of the District Court or the Court of Appeals.

Petitioner was suspended and discharged from his hourly GM job after he brought a shotgun onto company property, shot a fellow employee, and was in turn shot by police. His discharge was for violation of a GM rule prohibiting bringing a firearm onto company property.

Months later, Petitioner was acquitted of a state criminal assault charge on the grounds of insanity.

Petitioner claims in this case that GM should not have discharged him, and that the union should have arbitrated his discharge, because his mental condition excused an otherwise clear violation of GM's work rules.

The courts below both held that the record contained no facts supporting Petitioner's claim of breach of duty of fair representation by the union.

With this background, Respondent GM restates the questions presented by Petitioner as follows:

I.

WHETHER IT IS A BREACH OF DUTY OF FAIR REPRESENTATION FOR A UNION TO WITHDRAW A DISCHARGE GRIEVANCE WITHOUT RAISING A CLAIM THAT THE EMPLOYEE'S MISCONDUCT SHOULD BE EXCUSED BECAUSE OF MENTAL CONDITION WHERE: (a) THE MISCONDUCT SUPPORTING DISCHARGE IS ADMITTED; (b) THE EMPLOYEE MAKES NO SUCH CLAIM OR REQUEST TO THE UNION; AND (c) THE UNION CONSIDERS THE GRIEVANT'S MENTAL CONDITION BUT CONCLUDES IN GOOD FAITH THAT IT WILL LOSE AN ARBITRATION OF THE CASE.

II.

WHETHER IT IS A BREACH OF DUTY OF FAIR REPRESENTATION FOR A UNION NOT TO AFFIRMATIVELY REQUEST DISABILITY STATUS FOR A DISCHARGED EMPLOYEE WHERE: (a) THE MISCONDUCT SUPPORTING DISCHARGE IS ESTABLISHED; AND (b) THE EMPLOYEE MAKES NO SUCH CLAIM TO THE UNION.

RULE 28.1 STATEMENT

General Motor's non-wholly owned subsidiaries and affiliates are:

Aralmex, S.A. de C.V. (Mexico)
 Automotriz Gencor S.A. (Ecuador)
 Autos y Maquinas del Ecuador S.A. (AYMESA)
 (Ecuador)
 Companis Nacional de Direcciones Automotrices, S.A.
 de C.V. (Mexico)
 Compresores Delfa, C.A. (Venezuela)
 Convesco Vehicle Sales GmbH (West Germany)
 Daewoo Motor Co., Ltd. (Korea)
 DHB — Componentes Automotives S.A. (Brazil)
 Fabrica Colombians de Automotores S.A.
 ("Colomotores") (Columbia)
 General Motors de Colombia S.A. (Columbia)
 General Motors Egypt, S.A.E. (Egypt)
 General Motors Iran Limited (Iran)
 General Motors Kenya Limited (Kenya)
 GM Allison Japan Limited (Japan)
 GM Fanuc Robotics Corp. (USA)
 Industries Mecaniques Meghrebires, S.A. (Tunisia)
 Industrija Delova Automobils, Kikinda (Yugoslavia)
 Isuzu Motors Limited (Japan)
 Isuzu Motors Overseas Distribution Corp. (Japan)
 Kabelwerke Reinshagen GmbH (West Germany)
 Kabelwerke Reinshagen Werk Berlin GmbH
 (West Germany)
 Kabelwerke Reinshagen Werk Neumarkt GmbH
 (West Germany)
 Moto Diesel Mexicana, S.A. de C.V. (Mexico)
 Motor Enterprises, Inc. (USA)
 New United Motor Manufacturing, Inc. (USA)
 Omnibus BB Transportes, S.A. (Ecuador)

Promotora de Partes Electronicos Automotrices
(Mexico)

P.T. Mesin Isuzu Indonesia (Indonesia)

Senalizacion y Accesorios del Automobil Yorka, S.A.
(Spain)

Suzuki Motor Co., Ltd. (Japan)

Unicables, S.A. (Spain)

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STATEMENT OF THE CASE

On April 16, 1982, while working at GM's Oldsmobile plant in Lansing, Michigan, Petitioner took a shotgun from his car in the company parking lot and shot an employee with whom he had a dispute. Mr. Burke shot the employee a number of times, and was later himself shot by police officers who were summoned to the plant. At the time of this incident, Mr. Burke was working a reg-

ular schedule for General Motors. He was not on leave, nor had he requested a leave for disability or any other reason.

Petitioner was a member of the bargaining unit represented by defendant Local 652 of the United Auto Workers ("UAW"). Mr. Burke's terms and conditions of employment were governed by a labor contract and related agreements negotiated between GM and the UAW. Under the labor contract, GM is allowed to discharge any employee for "cause". (UAW Agreement, ¶ 8, Exhibit 1 to the Deposition of James Sickles.) After interviewing Mr. Burke and obtaining other information about the April 16 shooting incident, GM determined that Mr. Burke's conduct on that date was "cause" for discharge under the labor agreement. He was immediately suspended. After further review, he was discharged in July, 1982, for violating a work rule prohibiting bringing weapons onto company property.

The GM-UAW Agreement contains a grievance procedure available to employees who dispute GM discipline decisions. (UAW Agreement, ¶¶ 28-55, Exhibit 1 to the Deposition of James Sickles.) Mr. Burke had utilized this grievance procedure in the past. After his suspension, Mr. Burke took advantage of this procedure, filing a grievance with the UAW. The grievance procedure culminates in binding arbitration. In Petitioner's case, the UAW determined prior to arbitration that it could not successfully challenge Mr. Burke's discharge. (Sickles Deposition at pp. 15-16.) It therefore withdrew Mr. Burke's grievance. (Sickles Deposition at pp. 6, 11.)

Petitioner was incarcerated following the April 16 shooting incident. He was charged with assault with intent to commit murder, but was acquitted by reason of insanity.

In deciding that an arbitration would not be successful, the union fully considered what it then knew about Mr. Burke's mental condition. Shop Committeeman James Sickles described the union's judgment that Petitioner's mental state would not be an adequate defense to his discharge as follows:

Q: In your judgment, would the outcome of the criminal case have any relevance as to the merits of the grievance?

A: No, that — the criminal case was a separate issue to me. It had no relevance whatsoever in my determination, or it wouldn't have had. And it still today wouldn't have had.

Q: In your judgment, did Mr. Burke's mental condition have any relevance to the outcome of the grievance?

A: No, it did not.

Q: Why doesn't the mental condition have any relevance?

A: The fact still remains, whether he was mentally competent or mentally incompetent, he was still in possession of a lethal weapon on company property. That is what he was charged with and he was guilty of that infraction.

(Deposition of James Sickles, p. 11.)

The record confirms that Petitioner's mental condition at no time interfered with his full understanding of his discharge by GM, of the union's decision that it could not overturn the discharge, or of the criminal proceedings against him. For example, Mr. Burke confirmed at his deposition that:

1. He fully understood his suspension by GM shortly after the April 16 shooting, and fully understood

that GM was considering terminating his employment (Burke Deposition at pp. 33, 34.);

2. He fully understood that GM believed he had violated the rule against bringing firearms onto company property, and agreed that he had violated the rule (Burke Deposition at p. 34.);
3. He fully understood his discharge by GM in July, 1982, and knew why he had been fired (Burke Deposition at pp. 34, 35.);
4. He knew, no later than July, 1982, that the union's position on his discharge was that it could do nothing about it, and that the union "could protest, but it wouldn't do any good" (Burke Deposition at pp. 20, 22, 25, 37, 40, 47, 49.);
5. He has never had a guardian appointed for him (Burke Deposition at p. 19.);
6. He was found fully competent to stand trial on his criminal charge, and to assist in his own defense (Burke Deposition at p. 17.);
7. He considered immediate legal action against GM, but decided against it because he did not want to return to Oldsmobile and because he had "more important things to take care of" than his discharge; he decided to address GM *after* criminal matters were finished (Burke Deposition at pp. 19, 20, 23, 25, 39, 43.);
8. He discussed his discharge by GM with at least two lawyers during the spring or summer of 1982. (Burke Deposition at pp. 22-23, 40.)

Finally, during the grievance process Petitioner at no time told GM or union representatives that he felt he had not violated GM's weapons rule. He never told GM

or the union that he felt the rule violation should be excused because of his mental condition. He never asked the union to challenge his suspension or discharge for that reason.

General Motors heard nothing from Petitioner or anyone on his behalf between the time of his discharge and January, 1985. At that time, Mr. Burke's current attorney wrote GM regarding Mr. Burke's eligibility for disability insurance benefits. The present lawsuit was filed shortly thereafter in March, 1985.

REASONS FOR DENYING THE WRIT

I.

THE RULING OF THE SIXTH CIRCUIT THAT THE UNION DID NOT BREACH ITS DUTY OF FAIR REPRESENTATION BY WITHDRAWING PETITIONER'S DISCHARGE GRIEVANCE IS CORRECT UNDER THIS COURT'S CONTROLLING LAW, AND IS NOT INCONSISTENT WITH THE LAW OF ANY OTHER CIRCUIT.

A union's duty of fair representation has been fashioned by this Court because of the union's power as the exclusive representative of its members. *See e.g., Steele v Louisville & Nashville R. Co*, 323 US 192 (1944); *Ford Motor Co v Huffman*, 345 US 330 (1953). The union has the duty of representing the interests of all employees "fairly, impartially and in good faith". *Steele*, 323 US at 203. A union can fairly represent all of its members as their exclusive representative even though various members may have a conflict of interest as to the outcome of a particular matter. *Humphrey v Moore*, 375 US 335, 350 (1964).

The controlling standard is contained in *Vaca v Sipes*, 386 US 171, 190 (1967), where this Court held:

A breach of the statutory duty of fair representation occurs only when a union's conduct toward a member of the collective bargaining union is arbitrary, discriminatory or in bad faith.

This Court also stated in *Vaca* that an individual employee did *not* have an absolute right to have his grievance taken to arbitration. *Id* at 191. It recognized that taking every case to arbitration would undermine the parties' contractual settlement machinery, destroy the employer's confidence in the union's authority, and significantly increase the number of arbitrations and the cost of the contractual grievance process. Accordingly, this Court realized that a union must be permitted a "wide range of reasonableness . . . in serving the unit it represents". *Huffman*, 345 US at 338.

The reason why the union withdrew Petitioner's grievance in this case is undisputed. The union withdrew the grievance protesting Petitioner's discharge because it did not believe it could prevail, under the circumstances, in arbitration. The union had conducted an investigation, and had all the essential facts. Petitioner had admitted that he had brought a shotgun onto company property. He admitted that what he did was a violation of GM's work rules. The union realized the rule existed precisely to avoid the kind of tragic misconduct that occurred on April 16. It also realized that discharge was an appropriate penalty for what Mr. Burke had done. Finally, Petitioner himself had not claimed that his admitted rule violation should be excused because of his mental condition. His only response to GM's position was to admit the misconduct and state that he was sorry.

Petitioner has cited no authority that the UAW's decision, on the above facts, violates *Vaca*. To the contrary, it clearly does not.

The only case cited by Petitioner supporting a claimed conflict with other circuits is *Carpenter v West Virginia Flat Glass, Inc.*, 763 F2d 672 (1985). *Carpenter* is completely different from the instant case. There, the central issue raised by the employee's grievance was his physical ability to work. The parties had agreed to rely on the opinion of a third physician. The doctor's report did not specifically address the physical ability of the grievant to work. The union did not request clarification of that opinion, and withdrew the grievance. The Fourth Circuit properly found arbitrary under *Vaca* the failure of the union to ask the key question of the key witness in the grievance.

Nothing remotely similar is involved here. The Petition incorrectly states that:

As in *Carpenter*, petitioner's health was the issue for the union and the company to resolve in determining whether petitioner should be discharged. . . .

(Petitioner's brief, p. 10.)

This is nonsense. The issue before the union was whether Petitioner violated GM's weapons rule. A violation of that rule was known by the union, the company and Petitioner to be proper grounds for discharge. The union made the judgment that Petitioner's existing mental state would not excuse that violation. Petitioner's health was *never* raised as an issue by him until years after the Petitioner's discharge. No medical or psychological examinations were made or requested by anyone.

Therefore, *Carpenter* is irrelevant to the instant Petition. The Sixth Circuit's ruling in the present case conflicts with no rulings of any other circuit.

In withdrawing Petitioner's grievance in this case, the UAW acted well within this "wide range of reasonable-

ness" recognized as necessary by this Court. Mr. Burke shot a co-worker on company premises. This violation of company work rules was "cause" for his discharge under the collective bargaining agreement. Whether or not Mr. Burke was, months later, acquitted by reason of insanity under the laws of a particular state is absolutely irrelevant in the collective bargaining context. The state has entirely different purposes in permitting an insanity defense than an employer and union do in agreeing upon rules governing the workplace. The state permits an insanity defense because it only desires to punish those who are morally culpable. By contrast, an employer and union are interested in providing a safe, efficient and productive working environment for both management and employees. The "law of the shop" can achieve these goals only if known, reasonable standards are uniformly applied in accordance with the terms of the collective bargaining agreement.

What Petitioner seeks in this case is a restriction on union grievance processes which is totally contrary to the principles established by this Court. Petitioner wants this Court to require unions to raise and arbitrate a mental impairment defense to employee discipline and discharge, or violate the duty of fair representation. This defense would have to be raised by the union *on its own*, regardless of any such claim by the employee, whenever the union knows facts which might indicate unstable or anti-social behavior by the employee.

The restriction advocated by Petitioner is contrary to basic principles of federal labor law. It would obviously require psychological examinations. It would involve unpredictable delays in resolution of grievances. Requiring arbitration of such issues would burden settlement of such disputes with a high risk of litigation. Petitioner's position is therefore completely at odds with this Court's

requirement that federal labor law promote the timely and efficient resolution of labor disputes. It should be rejected by this Court.

II.

PETITIONER CITES NO AUTHORITY, MUCH LESS A CONFLICT AMONG THE CIRCUITS, FOR HIS CLAIM THAT THE DUTY OF FAIR REPRESENTATION REQUIRES A UNION TO DEMAND DISABILITY STATUS FOR A DISCHARGED EMPLOYEE WHO ADMITTEDLY VIOLATED A WORK RULE, BUT WHO SHOWS SIGNS OF MENTAL INSTABILITY.

This part of Petitioner's argument is again a request for a major restriction on grievance processes. Petitioner cites no authority for his proposition. He has shown no conflict among the circuits on the question he seeks the Court to reach.

This argument is merely another effort by Petitioner's counsel, years after the fact, to second-guess the union's handling of Petitioner's grievance. For the following reasons, this claim is wholly without merit.

Under the collective bargaining agreement between GM and the UAW, the union could oppose Petitioner's discharge only if that discharge violated the labor contract. The Petitioner suggests that the UAW should have argued that instead of discharging Mr. Burke, GM should have placed him on disability leave. There is absolutely no basis in the collective bargaining agreement for such an argument by the union.

The fact that GM did not, on its own initiative, place Mr. Burke on disability leave cannot possibly be viewed as a violation of the collective bargaining agreement. Disability leave, for physical and mental reasons, is available under the contract. Under agreed-upon procedures, that leave is to be requested by the employee in-

volved, and be supported by medical proof of the employee's mental or physical condition. There is no contractual provision allowing GM to unilaterally take such action.

Therefore it would have been fruitless for the union to argue that GM had violated the labor agreement by not placing Mr. Burke on disability leave. Because such a claim is not even an arguable violation of the labor contract, it is hardly a breach of duty of fair representation for the union not to take such a claim to arbitration. The union's withdrawal of Petitioner's grievance, rather than arbitrating whether he should have been placed on disability leave, cannot be arbitrary, discriminatory or bad faith conduct.

CONCLUSION

For the above reason, the Petition for Certiorari should be denied.

Respectfully submitted,

DAVID M. DAVIS

DANIEL G. GALANT

(Counsel of Record)

GENERAL MOTORS CORPORATION

New Center One Building

3031 West Grand Boulevard

Detroit, MI 48232

(313) 974-1608

Attorneys for General Motors Corporation

Of Counsel:

GORDON J. QUIST

CHARLES C. HAWK

MILLER, JOHNSON,

SNELL & CUMMISKEY

800 Calder Plaza Building

Grand Rapids, MI 49503

(616) 459-8311

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